



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 7, 1997

Mr. Dennis J. Eichelbaum
Schwartz & Eichelbaum, P.C.
General Counsel
3700 Ross Avenue, Box 69
Dallas, Texas 75204-5491

OR97-0488

Dear Mr. Eichelbaum:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, Government Code chapter 552. We assigned your request ID# 104311.

The Dallas Independent School District (the "district"), which you represent, received an open records request for the names, resumes, applications, and personnel files of all individuals who have applied for the position of superintendent of schools. You contend the requested information comes under the protection of section 552.124 of the Government Code, as enacted by the Texas legislature in Senate Bill 1. *See* Act of May 30, 1995, 74th Leg., R.S., ch. 260, § 31, 1995 Tex. Sess. Law Serv. 2486 (Vernon).

However, you were instructed as the district's officer for public records or the officer's agent for public records, to submit to our office certain information that is required to be submitted to our office under sections 552.301(b) and 552.303 under Subchapter G of the Government Code. This notification is the process or system used to produce the submission of responsive documents by the governmental body if this office's inspection of the documents reveals that the governmental body has not submitted the documents in its request for an opinion. In your particular case, ID# 104311, you did not submit the responsive documents necessary for the evaluation of your exception. You did not submit any information responsive to this office's facsimile request to you of February 7, 1997 stating:

Although we note your assertion, the DISD does not have the applications, as there is a search firm which is accumulating the application, and thus the documents cannot and will not be forwarded to

the Attorney General's Office," we are requesting that you submit a copy of the responsive information requested pursuant to and in accordance with Subchapter G, section 552.303 of the Government Code."

The facsimile correspondence was forwarded to you from this office's number 512-463-2092 to your facsimile 214-989-8267 pursuant to section 552.303(c) of the Government Code on February 7, 1997. The original of this facsimile correspondence is retained in this office where items of this nature are kept. Our records indicate that the facsimile transmission was successful. In fact, you acknowledge receipt of the facsimile in a letter received in this office on February 10, 1997 which states, "... [t]he letter DISD received was unsigned, and cannot be verified as being authentic. Due to the concern over the authenticity of the letter, we will not respond until we receive an actual letter on authentic letterhead. ..."

Additionally, through the February 7, 1997 correspondence we requested that you provide this information to our office within seven days from the date of receiving the notice. The notice further stated that under section 552.303(e), failure to comply would result in the legal presumption that the requested information is public information.

You did not timely provide our office with the information that was requested in our February 7, 1997 notice to you. In fact, in pertinent part, you state in your response letter to this office:

"... [t]he Dallas Independent School District does not possess, and is unaware of any documents that are responsive to this request;

...

Yet, in your December 13, 1996 letter to this office you stated:

"... Furthermore, the DISD does not have the applications, **as there is a search firm which is accumulating the applications.** ..."

"Custody" of records does not require the element of manual possession. JM-1250 (1990). In fact, if the records are developed and maintained by a consultant, but the governmental body is entitled to examine them, they are "maintained" by the governmental body for purposes of the Open Records Act. Open Records Decision 558 (1990). Nonetheless, we still have not received from you any of the information requested. We direct your attention to the following provision of the Government Code which states that: "[A] governmental body that requests an attorney general decision under this subchapter *shall* supply to the attorney general in accordance with Section 552.301, the specific information requested. ..."
552.303(a) Gov't Code. (Emphasis added.)

Therefore, as provided by section 552.303(e), the information that is the subject of this request for information is presumed to be public information. Information that is

presumed public must be released unless a governmental body demonstrates a compelling interest to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). You did not present any compelling reasons which properly invoke an exception to disclosure. Therefore, the information is presumed to be public and must be released.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Janet I. Monteros', with a long horizontal line extending to the right.

Janet I. Monteros
Assistant Attorney General
Open Records Division

JIM/rho

Ref.: ID# 104311

cc: Mr. Don Venable
2620 Andrea Lane
Dallas, Texas 75228-3504